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Date:

June 08, 2016

LEGEND

X =

Y =

A =

B =

C =

D =

E =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

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Sub 18 =

Trust 1 =

Trust 2 =

Trust 3 =

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Date 17 =

Date 18 =

Date 19 =

Date 20 =

Date 21 =

Year 1 =

Year 2 =

Years =

State =

Dear :

This responds to a letter dated December 16, 2015, and subsequent correspondence, submitted on behalf of X, by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code) and requesting relief pursuant to § 301.9100-3 of the Procedure and Administration Regulations that X be granted an extension of time to elect to treat Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 9, as a qualified subchapter S subsidiaries (QSub) under section § 1361(b)(3) of the Code.

FACTS

According to the information submitted and representations within, X, formerly Y, was incorporated on Date 1, under the laws of State and elected to be treated as an S corporation effective Date 2.

As of Date 2, Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, Trust 10, Trust 11, Trust 12, Trust 13, Trust 14 and Trust 15 were shareholders of X. X represents that Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, Trust 10, Trust 11, Trust 12, Trust 13, Trust 14 and Trust 15 were eligible to make Qualified Subchapter S Trust (QSST) elections as of Date 2. However, the income beneficiaries of Trust 3, Trust 6, Trust 7, Trust 8, Trust 11, Trust 12, and Trust 14 inadvertently failed to timely file QSST elections, thereby causing Trust 3, Trust 6, Trust

7, Trust 8, Trust 11, Trust 12, and Trust 14 to become ineligible shareholders of X. In addition, the guardians of the minor beneficiaries of Trust 1, Trust 2, Trust 4, Trust 5, Trust 10, Trust 13, and Trust 15 failed to timely file QSST elections, thereby causing Trust 1, Trust 2, Trust 4, Trust 5, Trust 10, Trust 13, and Trust 15 to become ineligible shareholders of X. As a result, X's S election on Date 2 was invalid. E, the beneficiary of Trust 9, timely filed a QSST election for Trust 9; however, X's S election was not valid on Date 2, thus invalidating Trust 9's QSST election.

On Date 2, A was an eligible S corporation shareholder of X. A died on Date 4. A's shares in X were transferred to Trust 16, Trust 17, and Trust 18 on Date 5. X represents that Trust 16, Trust 17, and Trust 18 were eligible to make QSST elections as of Date 8 and that the beneficiary of Trust 16, Trust 17, and Trust 18 timely filed QSST elections on Date 8. However, X's S election was not valid on Date 2, thus invalidating Trust 16, Trust 17, and Trust 18's QSST elections.

On Date 3, Trust 8 distributed all of its holdings in X to B, an eligible S corporation shareholder. On Date 9, Trust 5 distributed all of its holdings in X to C, an eligible S corporation shareholder. On Date 12, Trust 4 distributed all of its holdings in X to D. D then immediately contributed the X shares to Trust 28, an eligible S corporation shareholder. On Date 20, E, the beneficiary of Trust 9 died. Trust 9 remains an eligible shareholder until Date 21.

X represents that Trust 19, Trust 20, Trust 21, Trust 22, Trust 23, Trust 24, Trust 25, Trust 26 and Trust 27 were eligible to make Electing Small Business Trust (ESBT) elections as of Date 2. X represents that the trustee of Trust 19, Trust 20, Trust 21, Trust 22, Trust 23, Trust 24, Trust 25, Trust 26 and Trust 27 timely filed ESBT elections. However, X's S election was not valid on Date 2, thus invalidating Trust 19, Trust 20, Trust 21, Trust 22, Trust 23, Trust 24, Trust 25, Trust 26 and Trust 27's ESBT elections.

X represents that the trustee of Trust 7, Trust 11, and Trust 12 decided to convert Trust 7, Trust 11, and Trust 12 from QSSTs to ESBTs effective Date 6. X represents that Trust 7, Trust 11, and Trust 12 were eligible to make ESBT elections effective Date 6. X represents that the trustee of Trust 7, Trust 11, and Trust 12 timely filed ESBT elections. However, X's S election was not valid on Date 2, thus invalidating Trust 7, Trust 11, and Trust 12's ESBT elections. In addition, the conversions of Trust 7, Trust 11, and Trust 12 from QSSTs to ESBTs were not valid because the trustees and beneficiaries of Trust 7, Trust 11, and Trust 12 did not file the trust conversions pursuant to Rev. Proc. 98-23.

X represents that the trustee of Trust 2, Trust 6, and Trust 15 decided to convert Trust 2, Trust 6, and Trust 15 from QSSTs to ESBTs effective Date 19. X represents that Trust 2, Trust 6, and Trust 15 were eligible to make ESBT elections effective Date 19. X represents that the trustee of Trust 2, Trust 6, and Trust 15 timely filed ESBT

elections. However, X's S election was not valid on Date 2, thus invalidating Trust 2, Trust 6, and Trust 15's ESBT elections.

Effective Date 2, X elected to treat Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, and Sub 7 as Qualified Subchapter S Subsidiaries (QSubs). X also made QSub elections for Sub 8, Sub 9, Sub 10, Sub 11, and Sub 12 effective Date 7; Sub 13 effective Date 10; Sub 14 effective on Date 11; Sub 15 effective Date 13; Sub 16 effective Date 14; Sub 17 effective Date 15; and Sub 18 effective Date 18. However, X's S election was not valid on Date 2, thus invalidating X's QSubs elections. In addition, Sub 4 and Sub 9's QSub elections were invalid due to an improperly completed Form 8869, Qualified Subchapter S Subsidiary Election. Furthermore, Sub 1, Sub 2, Sub 3, Sub 5, Sub 6, and Sub 7's Form 8869s were invalid due to a processing error.

X represents that late in Year 1, it entered into a series of transactions that qualified as an F reorganization within the meaning of § 368(a)(1)(F) in which Y, which at that time was the "parent" S corporation, formed Sub 16 as a wholly-owned subsidiary, followed by a QSub election effective Date 14. Sub 16 formed Sub 17, followed by a QSub election effective Date 15. Sub 17 then merged into Y, the then "parent" S corporation, on Date 17, with Y surviving the merger. As a result of this merger, Sub 16 became the new "parent" S corporation, X, and Y became Sub 18, a wholly-owned subsidiary of X, with X filing a QSub election for Sub 18 effective Date 18. X represents that as a result of this merger no new S corporation election was required pursuant to Rev. Rul. 2008-18. X changed its name to its current name on Date 18 and Sub 18 changed its name to its current name on Date 16.

X represents that on, and at all relevant dates after, Date 2, the date of X's intended S election, X has owned all of the outstanding stock of Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10, Sub 11, Sub 12, Sub 13, Sub 14, Sub 15, Sub 16, Sub 17 and Sub 18 as of the effective dates X intended to elect to treat each as a QSub. X represents that it intended to elect to treat Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, and Sub 7 as QSubs effective Date 2, Sub 8, Sub 9, Sub 10, Sub 11, and Sub 12 as QSubs effective Date 7; Sub 13 as a QSub effective Date 10, Sub 14 as a QSub effective Date 11, Sub 15 as a QSub effective Date 13, Sub 16 as a QSub effective Date 14, Sub 17 as a QSub effective Date 15, and Sub 18 as a QSub effective Date 18. X also represents that X has filed tax returns for all tax years consistent with the treatment of Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10, Sub 11, Sub 12, Sub 13, Sub 14, Sub 15, Sub 16, Sub 17 and Sub 18 as QSubs.

X represents that Trust 1, Trust 3, Trust 4, Trust 5, Trust 8, Trust 9, Trust 10, Trust 13, Trust 14, Trust 16, Trust 17, and Trust 18 have qualified as QSSTs under § 1361(d) at all times since the date that each trust first acquired stock in X. X represents that the trusts have filed consistently as if valid QSST elections were in place for Years. X further represents that the failure to file QSST elections for the trusts was discovered in Year 2. X represents that the minor beneficiaries of Trust 1, Trust 4, Trust 5, Trust 10,

Trust 13, and Trust 15 have all reached the age of majority as of the date of this ruling request.

X represents that Trust 19, Trust 20, Trust 21, Trust 22, Trust 23, Trust 24, Trust 25, Trust 26 and Trust 27 have at all times met the requirements of an ESBT under § 1361(d)(3) since the date that each trust first acquired stock in X. X represents that the trusts have filed consistently as if valid ESBT elections were in place for Years. X further represents that the failure to file ESBT elections for the trusts was discovered in Year 2.

X represents that Trust 2, Trust 6, Trust 7, Trust 11, Trust 12, and Trust 15 have qualified as QSSTs under § 1361(d) at all times since the date that each trust first acquired stock in X until the date that each trust converted to an ESBT. X represents that Trust 2, Trust 6, Trust 7, Trust 11, Trust 12, and Trust 15 have filed consistently as if valid QSST elections were in place for the years the trusts were QSSTs and that Trust 2, Trust 6, Trust 7, Trust 11, Trust 12, and Trust 15 have filed consistently as if a valid ESBT election was in place for the years the trusts were ESBTs. X further represents that the failure to file QSST and ESBT elections for the trusts was discovered in Year 2. X represents that the minor beneficiary of Trust 2 has reached the age of majority as of the date of this ruling request.

X represents that the circumstances resulting in the failure to make the QSST and ESBT elections were inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that X has filed its income tax returns consistent with having a valid S election in effect for all taxable years since X elected to be an S corporation. X represents that other than the failure to make valid QSST elections on Date 2 and Date 8, and valid ESBT elections on Date 2, Date 6, and Date 19, X has qualified as a small business corporation at all times since its election on Date 2. Lastly, X and its shareholders agree to make any adjustments required as a condition of obtaining relief under § 1362(f) that may be required by the Secretary.

X represents that the inadvertent invalid election of its S corporation election was inadvertent and was not motivated by tax avoidance or retroactive tax planning.

LAW AND ANALYSIS

Section 1361(a) provides that an S corporation is a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b)(1) provides that the terms “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more

than 1 class of stock.

Section 1361(b)(3)(A) generally provides that a QSub shall not be treated as a separate corporation and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a Qualified subchapter S subsidiary .

Section 1361(c)(2)(A)(i) provides that, for purposes of section 1361(b)(1)(B), a trust all of which is treated (under subpart E of part I of subchapter J of chapter 1) as owned by an individual who is a citizen or resident of the United States may be an S corporation shareholder.

Section 1361(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B), an ESBT is a permissible S corporation shareholder.

Section 1361(d)(1) provides that, in the case of a QSST with respect to which a beneficiary makes an election under paragraph 1361(d)(2), such trust shall be treated as a trust described in subsection 1361(c)(2)(A)(i) and for purposes of section 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under paragraph 1362(d)(2) is made.

Section 1361(d)(3) defines a QSST as a trust all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States. In addition, the terms of the trust must require that (i) during the lifetime of the current income beneficiary, there shall be only one income beneficiary of the trust, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary, (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary.

Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1.1361-1(m)(2)(i), of the Income Tax Regulations, provides that the trustee of

an ESBT must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of § 1.1361-1(m)(2)(ii).

Section 1.1361-1(m)(2)(iii) provides that the trustee of an ESBT must file the ESBT election within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a QSST election (generally within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust).

Section 1.1361-3(a) prescribes the time and manner for making an election to be classified as a QSub.

Section 1.1361-3(a)(4) provides that an election may be effective up to two months and 15 days prior to the date the election is filed or not more than 12 months after the election is filed. The proper form for making the election is Form 8869, Qualified subchapter S subsidiary Election.

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation. Section 1362(a)(2) provides that an election under § 1362(a) shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § (b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) § 1362(d) or § 1361(b)(3)(C); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken (A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a QSub, as the case may be, or (B) to acquire the required shareholder consents; and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a Qsub, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or

termination, such corporation shall be treated as an S corporation or a Qsub, as the case may be, during the period specified by the Secretary.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the Government.

Rev. Rul. 2008-18, situation 2, holds that, consistent with Rev. Rul. 64-250, a reorganization under § 368(a)(1)(F) did not cause the termination of an S corporation election under § 1362. In Rev. Proc. 2008-18, C, an individual, owned all of the stock of Z, an S corporation. In Year 1, Z formed *Newco*, which in turn forms *Mergeco*. Pursuant to a plan of reorganization, *Mergeco* merges with and into Z, with Z surviving and C receiving solely *Newco* stock in exchange for Z stock. *Newco* meets the requirements for qualification as a small business corporation and timely elects to treat Z as a QSub, effective immediately following the transaction. The transaction met the requirements of a reorganization under § 368(a)(1)(F) and Z's original S corporation election continued for *Newco*. *Newco* must obtain a new EIN. Z must retain its EIN even though a QSub election is made for Z and must use its original EIN any time the QSub is otherwise treated as a separate entity for federal tax purposes (including for employment and certain excise taxes) or if the QSub election terminates.

Rev. Rul. 64-250, 1964-2, C.B. 333, holds that a reorganization under § 368(a)(1)(F) did not cause a termination of an election under form § 1372, the predecessor to § 1362. In that revenue ruling, an electing small business corporation within the meaning of former § 1371(b) was reincorporated in another state through the corporation's shareholders organizing a new corporation in the other state and merging the existing corporation into the new corporation. The revenue ruling states that the surviving corporation also met the requirements for qualification as a small business corporation.

Rev. Proc. 98-23, section 4.01, provides, in relevant part, that a trust may convert from

a QSST to an ESBT if the trust (1) meets all the requirements to be an ESBT, except for the requirement that the trust not have a QSST election in place under § 1361(d)(2); (2) the trustee and the current income beneficiary of the trust make the ESBT election pursuant to section 4.02 of this Rev. Proc. with respect to the stock of each S corporation held by the trust; (3), the trust has not converted from an ESBT to a QSST within the 36 month period preceding the effective date of the new ESBT election; (4) except as provided in section 6 of this Rev. Proc., the effective date of the ESBT election cannot be more than 15 days and 2 months prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 15 days and 2 months prior to the date on which the election is filed, it will be effective 15 days and 2 months prior to the date on which it is filed. If an election specifies an effective date more than 12 months after the date on which the election is filed, it will be effective 12 months after the date it was filed.

Rev. Proc. 98-23, section 4.02, provides, in relevant part, that the current income beneficiary and the trustee of the trust must sign the ESBT election and file it with the service center where the S corporation files its income tax return. This ESBT election must state at the top of the document "ATTENTION ENTITY CONTROL – CONVERSION OF A QSST TO AN ESBT PURSUANT TO REV. PROC. 98-23" (emphasis in original) and include all the information otherwise required for an ESBT election. A separate election must be made with respect to the stock of each S corporation held by the trust.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S election was ineffective on Date 2. We further conclude that the missed QSST elections that caused the ineffectiveness were inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 2 and thereafter, provided X's S corporation election is otherwise valid and not otherwise terminated under § 1362(d).

This letter ruling is subject to the following conditions. No later than 120 days from the date of this letter: (1) the beneficiaries of Trust 3, Trust 6, Trust 7, Trust 8, Trust 9, Trust 11, Trust 12, and Trust 14 must file a QSST election for Trust 3, Trust 6, Trust 7, Trust 8, Trust 9, Trust 11, Trust 12, and Trust 14 effective Date 2; (2) both the former guardians and the beneficiaries of Trust 1, Trust 2, Trust 4, Trust 5, Trust 10, Trust 13, and Trust 15 must sign and file the QSST election for Trust 1, Trust 2, Trust 4, Trust 5, Trust 10, Trust 13, and Trust 15 effective Date 2; (3) the beneficiaries of Trust 16, Trust 17, and Trust 18 must file a QSST election for Trust 16, Trust 17, and Trust 18 effective Date 8; (4) the trustee of Trust 19, Trust 20, Trust 21, Trust 22, Trust 23, Trust 24, Trust 25, Trust 26 and Trust 27 must file an ESBT election for Trust 19, Trust 20, Trust 21, Trust 22, Trust 23, Trust 24, Trust 25, Trust 26 and Trust 27 effective Date 2; (5) the

trustee and beneficiaries of Trust 7, Trust 11, and Trust 12 must file the trust conversions to convert Trust 7, Trust 11, and Trust 12 from QSSTs to ESBTs effective Date 6 pursuant to Rev. Proc. 98-23; and (6) the trustee and beneficiaries of Trust 2, Trust 6, and Trust 15 must file the trust conversions to convert Trust 2, Trust 6, and Trust 15 from QSSTs to ESBTs effective Date 19 pursuant to Rev. Proc. 98-23.

These elections must be made with the appropriate service center within 120 days from the date of this letter. A copy of this letter should be attached to the elections. If these conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must send notification that its S election has terminated to the service center with which X's S election was filed.

Furthermore, based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of 120 days from the date of this letter to elect to treat Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, and Sub 7 as QSubs, effective Date 2 and Sub 9 as a QSub effective Date 7. The election should be made by filing Form 8869 with the appropriate service center, and a copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Furthermore, Sub 8, Sub 10, Sub 11, and Sub 12 will be treated as QSubs effective Date 7 and thereafter, provided Sub 8, Sub 10, Sub 11, and Sub 12 otherwise are eligible to be treated as QSubs. Lastly, Sub 13, Sub 14, Sub 15, Sub 16, Sub 17 and Sub 18 will be treated as QSubs effective Date 10, Date 11, Date 13, Date 14, Date 15 and Date 18, respectively, and thereafter, provided Sub 13, Sub 14, Sub 15, Sub 16, Sub 17 and Sub 18 otherwise are eligible to be treated as QSubs.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning whether X otherwise qualifies as an S corporation, or whether Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, Sub 8, Sub 9, Sub 10, Sub 11, Sub 12, Sub 13, Sub 14, Sub 15, Sub 16, Sub 17 and Sub 18 are eligible to be QSubs, for federal tax purposes. In addition, we express or imply no opinion on whether the transactions in Year 1 qualified as F reorganizations within the meaning of § 368(a)(1)(F).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representatives.

Sincerely,

David R. Haglund

David R. Haglund
Branch Chief Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes